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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/519,889 03/06/00 REDMAN

R R597.12-003

000164 QM12/1005  
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EXAMINER

FALIK, A

ART UNIT

PAPER NUMBER

3741

DATE MAILED: 10/05/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/519,889

Applicant(s)

Redman et al

Examiner

Andy Falik

Group Art Unit

3741



☒ Responsive to communication(s) filed on Mar 6, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-6 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-6 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 1

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Miscellaneous Reissue Matters*

If the patent (or reissue application) has been assigned, 37CFR 1.172 requires that all assignees owning an undivided interest consent to the filing of the reissue application. If there is no assignee, the application must so state.

The 10/5/99 Certificate of Correction changes must be entered in the original patent without any brackets or underlining.

There is no request to transfer the drawings from the original patented file to the reissue application.

Pursuant to para.3 in the Declaration associated with the specification and inventorship identification the "above identified specification" hasn't been identified in paras. 1 or 2. See MPEP 601.01 (a). Also, on line 2 in para. 9 "extend" should be changed to --extent--.

Re para. 5 in the Declaration by the Attorney why isn't the material deleted from patent claim 1 supported by lines 8-24 in column 3 in the specification?

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the decorative indicia recited in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott (4,967,419) in view of Bourdeau et al (4,868,927) where it would have been obvious to the person of ordinary skill in the glove making art at the time of the invention to include the longitudinal opening 7, protective flap 16, and zipper closure 11 of '927 in a lateral position on the '419 glove to facilitate its donning and removal. Fig.2 in '419 shows the sleeve geometries recited in claims 5&6. The discrete finger digit opening recitation on line 9 in claim 1 doesn't obviate the plurality of finger digit openings disclosed in '419. It is noted however that this rejection would be overcome if --all of-- was inserted "wherein" on line 11.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over 4,967,419 in view of 4,868,927 as applied to claim 1 above, and further in view of De Leo (5,173,966) where it would have been further obvious to the aforementioned glove maker to include the indicia 42 appearing in Fig. 1 in '966 on the thumb side of the glove 14 in Fig.2 in '419 for the advantage of enabling the wearer to initially pick up the '419 glove and easily apply it onto his hand with the thumb side in a proper relative sense.

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Claims 1,2,5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot (2,904,792) in view of 4,868,927 supra. where it would have been obvious to the person of ordinary skill in the glove making art at the time of the invention to replace the series of aligned apertures and a cord in the '792 gloove with the '927 zipper to provide for a more secure closing of the '792 glove on the wearer's arm. It is noted that Fig.1 in '792 shows a plurality of fingers passing through a single digit opening.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over 2,904,792 in view of 4,868,927 as applied to claim 1 above, and further in view of De Leo (5,173,966) where it would have been further obvious to the aforementioned glove maker to include the indicia 42 appearing in Fig.1 in '966 on the thumb side of the glove 1 in Fig.1 in '792 for the advantage of enabling the wearer to initially pick up the '792 glove and easily apply it onto his hand with the thumb side in a proper relative sense.

Claims 1&3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews (5,402,536) in view of 4,868,927 (supra.) where it would have been obvious to the person of ordinary skill in the glove making art to include the '927 zipper on a side of the '536 glove for the aforementioned ease of donning reason. Fig. 3 in '536 shows the claim 3 sleeve length arrangement.

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***Recapture of Surrendered Subject Matter***

Claims 1-6 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

The cancellation of lines 11-15 and 17-19 in patent claim 1(amended) constitutes the broadening aspect since these lines were added to the original patent claim 1 to define over the '792 and 419' references supra. The criticality of the subject matter in said canceled lines is argued on pages 2 and 5 in the 7/23/98 Amendment associated with parent application 08/968,977.

***Claim Rejections - 35 USC § 112***

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Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

On line 1 in claim 3 "wherein the sleeve extends to" is confusing. To more distinctly claim it should be changed to something such as --wherein the length of the sleeve is selected to extend to --.

***Conclusion***

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Any inquiry to the merits of this office action or to any specific features of this communication or earlier communications from the examiner should be directed to Andy Falik whose telephone number is (703) 308-1283. The examiner can normally be reached on Monday-Thursday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Calvert can be reached on (703) 305-1025. The fax phone number for this Group is (703) 305-3588.

Any inquiry of a general nature such as a missing reference or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. Any inquiry relating to the drawings should be directed to the Drafting Branch whose telephone number is (703) 305-8404.

  
**ANDY FALIK  
PRIMARY EXAMINER  
GROUP 3741**

AMF  
October 1, 2000